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In re Application of PNIOK et al
U.S. Application No.: 10/019,808
Int. Application No.: PCT/EP00/00395
Int. Filing Date: 19 January 2000
Priority Date: 31 March 1999
Attorney Docket No.: 75DE00606
For: CURRENT METER

DECISION

This is in response to the "Renewed Petition Under 37 C.F.R. § 1.47(a)" filed 14 October 2003.

BACKGROUND

On 19 January 2000, applicant filed international application PCT/EP00/00395, which claimed priority of an earlier Germany application filed 31 March 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 12 October 2000. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 01 October 2001 (30 September 2001 was a Sunday).

International application PCT/EP00/00395 became abandoned as to the United States of America at midnight on 01 October 2001 for failure to timely file the basic national fee.

On 07 October 2002, applicant filed a petition under 37 CFR 1.47(a).

On 16 December 2002, the DO/EO/US mailed a Notice of Abandonment.

On 13 January 2003, applicant filed a petition under 37 CFR 1.137(b).

On 20 June 2003, this Office mailed a decision dismissing the 07 October 2002 petition under 37 CFR 1.47(a) and granting the 13 January 2003 petition under 37 CFR 1.137(b).

On 14 October 2003, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Applicant has previously satisfied items (1), (3), and (4) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The renewed petition states that inventor Wollny refuses to sign the application papers. Petitioner has sufficiently demonstrated that a bona fide attempt was made to present a complete copy of the application papers (including specification, claims, drawings, and oath/declaration) to Wollny for signature (see affidavit of Verena Khinda). Furthermore, petitioner has provided

evidence of an express oral refusal to sign (see affidavit of Verena Khinda). Therefore, it can be concluded with reasonable certainty that Wollny refuses to join in the application.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(a) is GRANTED.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a proper translation of the international application into English must be filed. Note that the drawings contain untranslated words.



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Dear Heinz Wollny:

You are named as a joint inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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